necessary or morally justified must, so far as his support is concerned, be conclusively determined by reference to his opinion.

When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test which shall conclude the government and stay its hand. We are a Christian people (*Holy Trinity Church* v. *United States*, 143 U. S. 457, 470-471), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a Nation with the duty to survive; a Nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the Nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God.

The applicant here rejects that view. He is unwilling to rely, as every native born citizen is obliged to do, upon the probable continuance by Congress of the long established and approved practice of exempting the honest conscientious objector, while at the same time asserting his willingness to conform to whatever the future law constitutionally shall require of him; but discloses a present and fixed purpose to refuse to give his moral or armed support to any future war in which the country may be actually engaged, if, in his opinion, the war is not morally justified, the opinion of the Nation as expressed by Congress to the contrary notwithstanding.

If the attitude of this claimant, as shown by his statements and the inferences properly to be deduced from them, be held immaterial to the question of his fitness for admission to citizenship, where shall the line be drawn? Upon what ground of distinction may we hereafter reject another applicant who shall express his willingness to respect any particular principle of the Constitution or obey any future statute only upon the condition that he shall entertain the opinion that it is morally justified? The applicant's attitude, in effect, is a refusal to take the oath of allegiance except in an altered form. The qualifications upon which he insists, it is true, are made by parol and not by way of written amendment to the oath; but the substance is the same.

It is not within the province of the courts to make bargains with those who seek naturalization. They must accept the grant and take the oath in accordance with the terms fixed by the law, or forego the privilege of citizenship. There is no middle choice. If one qualification of the oath be allowed, the door is opened for others, with utter confusion as the probable final result. As this Court said in *United States* v. *Manzi*, 276 U. S. 463, 467:

"Citizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant."

The Naturalization Act is to be construed "with definite purpose to favor and support the Government," and the United States is entitled to the benefit of any doubt which remains in the mind of the court as to any essential matter of fact. The burden was upon the applicant to show that his views were not opposed to "the principle that it is a duty of citizenship, by force of arms when necessary, to defend the country against all enemies, and that [his] opinions and beliefs would not prevent or impair the true faith and allegiance required by the Act." *United States* v. *Schwimmer, supra*, 649, 650, 653. We are of opinion that he did not meet this requirement. The examiner and the court of first instance who heard and weighed the evidence and saw the applicant and witnesses so concluded. That conclusion, if we were in doubt, would not be rejected except for good and persuasive reasons, which we are unable to find.

The decree of the court of appeals is reversed and that of the district court is affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 504.—October Term, 1930.

The United States, Petitioner, *vs.* Douglas Clyde Macintosh.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 25, 1931.]

Mr. Chief Justice Hughes, dissenting.

I am unable to agree with the judgment in this case. It is important to note the precise question to be determined. It is solely one of law, as there is no controversy as to the facts. The question is not whether naturalization is a privilege to be granted or withheld. That it is such a privilege is undisputed. Nor, whether the Congress has the power to fix the conditions upon which the privilege is granted. That power is assumed. Nor, whether the Congress may in its discretion compel service in the army in time of war or punish the refusal to serve. That power is not here in dispute. Nor is the question one of the authority of Congress to exact a promise to bear arms as a condition of its grant of naturalization. That authority, for the present purpose, may also be assumed.

The question before the Court is the narrower one whether the Congress has exacted such a promise. That the Congress has not made such an express requirement is apparent. The question is whether that exaction is to be implied from certain general words which do not, as it seems to me, either literally or historically, demand the implication. I think that the requirement should not be implied, because such a construction is directly opposed to the spirit of our institutions and to the historic practice of the Congress. It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute. If such a promise is to be demanded, contrary to principles which have been respected as fundamental, the Congress should exact it in unequivo-

cal terms, and we should not, by judicial decision, attempt to perform what, as I see it, is a legislative function.

In examining the requirements for naturalization, we find that the Congress has expressly laid down certain rules which concern the opinions and conduct of the applicant. Thus it is provided that no person shall be naturalized "who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specified individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist". Act of June 29, 1906, c. 3592, § 7; 34 Stat. 596, 598; U. S. C. Tit. 8, § 364. The respondent, Douglas Clyde Macintosh, entertained none of these disqualifying opinions and had none of the associations or relations disapproved. Among the specific requirements as to beliefs, we find none to the effect that one shall not be naturalized if by reason of his religious convictions he is opposed to war or is unwilling to promise to bear arms. In view of the questions which have repeatedly been brought to the attention of the Congress in relation to such beliefs, and having regard to the action of the Congress when its decision was of immediate importance in the raising of armies, the omission of such an express requirement from the naturalization statute is highly significant.

Putting aside these specific requirements as fully satisfied, we come to the general conditions imposed by the statute. We find one as to good behavior during the specified period of residence preceding application. No applicant could appear to be more exemplary than Macintosh. A Canadian by birth, he first came to the United States as a graduate student at the University of Chicago, and in 1907 he was ordained as a Baptist minister. In 1909 he began to teach in Yale University and is now a member of the faculty of the Divinity School, Chaplain of the Yale Graduate School, and Dwight Professor of Theology. After the outbreak of of the Great War, he voluntarily sought appointment as a chaplain with the Canadian Army and as such saw service at the front. Returning to this country, he made public addresses in 1917 in support

of the Allies. In 1918, he went again to France where he had charge of an American Y. M. C. A. hut at the front until the armistice, when he resumed his duties at Yale University. It seems to me that the applicant has shown himself in his behavior and character to be highly desirable as a citizen and, if such a man is to be excluded from naturalization, I think the disqualification should be found in unambiguous terms and not in an implication which shuts him out and gives admission to a host far less worthy.

The principal ground for exclusion appears to relate to the terms of the oath which the applicant must take. It should be observed that the respondent was willing to take the oath, and he so stated in his petition. But, in response to further inquiries, he explained that he was not willing "to promise beforehand" to take up arms, "without knowing the cause for which my country may go to war" and that "he would have to believe that the war was morally justified". He declared that "his first allegiance was to the will of God"; that he was ready to give to the United States "all the allegiance he ever had given or ever could give to any country, but that he could not put allegiance to the government of any country before allegiance to the will of God." The question then is whether the terms of the oath are to be taken as necessarily implying an assurance of willingness to bear arms, so that one whose conscientous convictions or belief of supreme allegiance to the will of God will not permit him to make such an absolute promise, cannot take the oath and hence is disqualified for admission to citizenship.

The statutory provision as to the oath which is said to require this promise is this: "that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same". Act of June 29, 1906, c. 3592, § 4, 34 Stat. 596, 598; U. S. C. Tit. 8, § 381. That these general words have not been regarded as implying a promise to bear arms notwithstanding religious or conscientious scruples, or as requiring one to promise to put allegiance to temporal power above what is sincerely believed to be one's duty of obedience to God, is apparent, I think, from a consideration of their history. This oath does not stand alone. It is the same oath in substance that is required by Act of Congress of civil officers generally (except the President, whose oath is prescribed by the Constitution). The Congress, in prescribing such an oath

for civil officers, acts under Article VI, section 3, of the Constitution, which provides: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a Qualification to any Office or public Trust under the United States". The general oath of office, in the form which has been prescribed by the Congress for over sixty years, contains the provision "that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion." (R. S., § 1757, U. S. C., Tit. 5, § 16). It goes without saying that it was not the intention of the Congress in framing the oath to impose any religious test. When we consider the history of the struggle for religious liberty, the large number of citizens of our country from the very beginning, who have been unwilling to sacrifice their religious convictions, and in particular, those who have been conscientiously opposed to war and who would not yield what they sincerely believed to be their allegiance to the will of God, I find it impossible to conclude that such persons are to be deemed disqualified for public office in this country because of the requirement of the oath which must be taken before they enter upon their duties. The terms of the promise "to support and defend the Constitution of the United States against all enemies, foreign and domestic," are not, I think, to be read as demanding any such result. There are other and most important methods of defense, even in time of war, apart from the personal bearing of arms. We have but to consider the defense given to our country in the late war, both in industry and in the field, by workers of all sorts, by engineers, nurses, doctors and chaplains, to realize that there is opportunity even at such a time for essential service in the activities of defense which do not require the overriding of such religious scruples. I think that the requirement of the oath of office should be read in the light of our regard from the beginning for freedom of conscience. While it has always been recognized that the supreme power of government may be exerted and disobedience to its commands may be punished, we know that with many of our worthy

citizens it would be a most heart-searching question if they were asked whether they would promise to obey a law believed to be in conflict with religious duty. Many of their most honored exemplars in the past have been willing to suffer imprisonment or even death rather than to make such a promise. And we also know, in particular, that a promise to engage in war by bearing arms, or thus to engage in a war believed to be unjust, would be contrary to the tenets of religious groups among our citizens who are of patriotic purpose and exemplary conduct. To conclude that the general oath of office is to be interpreted as disregarding the religious scruples of these citizens and as disqualifying them for office because they could not take the oath with such an interpretation would, I believe, be generally regarded as contrary not only to the specific intent of the Congress but as repugnant to the fundamental principle of representative government.

But the naturalization oath is in substantially the same terms as the oath of office to which I have referred. I find no ground for saying that these words are to be interpreted differently in the two cases. On the contrary, when the Congress reproduced the historic words of the oath of office in the naturalization oath, I should suppose that, according to familiar rules of interpretation, they should be deemed to carry the same significance.

The question of the proper interpretation of the oath is, as I have said, distinct from that of legislative policy in exacting military service. The latter is not dependent upon the former. But the long-established practice of excusing from military service those whose religious convictions oppose it confirms the view that the Congress in the terms of the oath did not intend to require a promise to give such service. The policy of granting exemptions in such cases has been followed from colonial times and is abundantly shown by the provisions of colonial and state statutes, of state constitutions, and of acts of Congress. See citations in the opinion of the Circuit Court of Appeals in the present case. 42 Fed. (2d) 845, 847, 848. The first constitution of New York, adopted in 1777, in providing for the state militia, while strongly emphasizing the duty of defense, added "That all such of the inhabitants of this state (being of the people called Quakers) as, from scruples of conscience may be averse to the bearing of arms, be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same

may, in the judgment of the legislature, be worth.'" Art XL. A large number of similar provisions are found in other States. The importance of giving immunity to those having conscientious scruples against bearing arms has been emphasized in debates in Congress repeatedly from the very beginning of our government, and religious scruples have been recognized in draft acts. Annals of Congress (Gales), 1st Congress, vol. I, pp. 434, 436, 729, 731; vol. II, pp. 1818-1827; Acts of February 24, 1864, 13 Stat. 6, 9; January 21, 1903, 32 Stat. 775; June 3, 1916, 39 Stat. 166, 197; May 18, 1917, 40 Stat. 76, 78. I agree with the statement in the opinion of the Circuit Court of Appeals in the present case that "This Federal legislation is indicative of the actual operation of the principles of the Constitution, that a person with conscientious or religious scruples need not bear arms, although as a member of society, he may be obliged to render services of a non-combatant nature".

Much has been said of the paramount duty to the State, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the State exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the State, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the State has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. As was stated by Mr. Justice Field, in *Davis* v. *Beason*, 133 U. S. 333, 342: "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will." One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegance to the will of God. Professor Macintosh, when pressed by the inquiries put to him, stated what is axiomatic in religious doctrine. And, putting aside dogmas with their particular conceptions of deity, freedom of conscience itself implies respect for an innate

conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power. The attempt to exact such a promise, and thus to bind one's conscience by the taking of oaths or the submission to tests, has been the cause of many deplorable conflicts. The Congress has sought to avoid such conflicts in this country by respecting our happy tradition. In no sphere of legislation has the intention to prevent such clashes been more conspicuous than in relation to the bearing of arms. It would require strong evidence that the Congress intended a reversal of its policy in prescribing the general terms of the naturalization oath. I find no such evidence.

Nor is there ground, in my opinion, for the exclusion of Professor Macintosh because his conscientious scruples have particular reference to wars believed to be unjust. There is nothing new in such an attitude. Among the most eminent statesmen here and abroad have been those who condemned the action of their country in entering into wars they thought to be unjustified. Agreements for the renunciation of war presuppose a preponderant public sentiment against wars of aggression. If, while recognizing the power of Congress, the mere holding of religious or conscientious scruples against all wars should not disqualify a citizen from holding office in this country, or an applicant otherwise qualified from being admitted to citizenship, there would seem to be no reason why a reservation of religious or conscientious objection to participation in wars believed to be unjust should constitute such a disqualification.

Apart from the terms of the oath, it is said that the respondent has failed to meet the requirement of "attachment to the principles

of the Constitution". Here, again, is a general phrase which should be construed, not in opposition to, but in accord with, the theory and practice of our Government in relation to freedom of conscience. What I have said as to the provisions of the oath I think applies equally to this phase of the case.

The judgment in *United States* v. *Schwimmer*, 279 U. S. 644, stands upon the special facts of that case, but I do not regard it as requiring a reversal of the judgment here. I think that the judgment below should be affirmed.

Mr. Justice HOLMES, Mr. Justice BRANDEIS and Mr. Justice STONE concur in this opinion.